CHAPTER 44:90:08

CANNABIS DISPENSARIES

Section

44:90:08:01 Preventing unauthorized access – Age verification.

44:90:08:02 Preventing unauthorized sales – Training requirements.

44:90:08:01. Preventing unauthorized access – Age verification.

1. No dispensary may allow entry into areas containing cannabis without first identifying an individual as a cardholder or other person authorized pursuant to ARSD 44:90:04:14.
2. No dispensary may allow entry to a patient who is under 21 years of age.
3. Acceptable methods of controlling access include:
   (A) Verification at an external cashier window or ticket window, followed by unlocking an exterior door to admit the individual into the building;
   (B) Verification at a cashier window or ticket window located in an entryway with a locked interior door that prevents access to any area containing cannabis, followed by unlocking the interior door; and
   (C) Verification by an agent outside a locked exterior or interior door, followed by unlocking the door.
4. Verification may not take place in any area in which a person may access cannabis without passing through a lockable door.
5. Any website or mobile application developed or hosted by an establishment must:
   (A) Include verification that the visitor is 21 years of age or older;

(B) Require the cardholder's or nonresident cardholder's registry identification number for verification of any online purchases; and

(C) Limit online sales to cardholders and nonresident cardholders who previously have made a purchase of cannabis or cannabis products at the dispensary.

Source:

General Authority: SDCL 34-20G-72(5)(c)

Law Implemented: SDCL 34-20G-64

44:90:08:02. Preventing unauthorized sales – Training requirements.

Before interacting with any cardholder, all employees of a dispensary must be trained to:

1. Determine the authenticity of registry identification cards, including temporary registry identification cards and nonresident registration credentials;
2. Ensure that the person presenting a temporary or department-issued registry identification card or nonresident registration credential is the authorized cardholder;
3. Use the verification system, including all options for accessing the system by phone, point-of-sale software, or mobile application;
4. Track the amount of cannabis dispensed for a patient's use, including consolidating the amounts in sales to the patient and the patient's designated caregiver; and
5. Verify that the dispensary has been designated to make sales to the patient or the patient's designated caregiver.

Source:

General Authority: SDCL 34-20G-72(5)(g)

Law Implemented: SDCL 34-20G-70, 34-20G-71

CHAPTER 44:90:09

SAMPLING AND TESTING

44:90:09:01 Mandatory testing prior to transfer.

44:90:09:02 Creation of batches – Collection of samples.

44:90:09:03 Packaging of samples for testing.

44:90:09:04 Storage while awaiting test results.

44:90:09:05 Receipt of results -- Remediation

44:90:09:01. Mandatory testing prior to transfer.

1. The following tests are mandatory for all cannabis and cannabis products:

   (A) Beginning July 1, 2022:

      (1) Potency testing for THC content and, if so labeled, CBD content;

      (2) Fungus testing for yeast and mold;

      (3) Bacteria testing for shiga-toxin producing Escherichia coli bacteria and salmonella bacteria;

   (B) Beginning July 1, 2023:

      (1) Biological toxin testing for Aflatoxins (B1, B2, G1, and G2); and ochratoxin A;

      (2) Solvent testing for acetone; butanes; ethanol; heptanes; isopropyl alcohol; propane; benzene; toluene; pentane; hexane; total xylenes (m–, p–, and o–); methanol; and ethyl acetate;

      (3) Heavy Metals testing for lead, arsenic, cadmium, and mercury; and

(4) Pesticides testing for abamectin, azoxystrobin, bifenazate, etoxazole, imazalil, imidacloprid, malathion, myclobutanil, permethrin, spinosad, spiromesifen, spirotetramat, and tebuconazole.

2. The absence of mandatory testing shall not be interpreted to allow:

(A) The use of prohibited solvents or pesticides;

(B) Agricultural or manufacturing practices that promote the growth of mold, yeast, or bacteria; or

(C) Soil or growing media containing unsafe levels of lead, arsenic, cadmium, or mercury.

3. Except as allowed by ARSD 44:90:09:06, no cannabis or cannabis products may be transferred by a cannabis cultivation facility or cannabis product manufacturing facility to a cannabis product manufacturing facility or cannabis dispensary unless:

(A) A cannabis testing facility has performed all mandatory tests on the cannabis or cannabis product and determined it complies with this article; and

(B) The cannabis or cannabis product is accompanied by a certificate of analysis issued by the cannabis testing facility and covering all mandatory tests.

4. Except samples for testing, any cannabis or cannabis products transferred from a cannabis cultivation facility or a cannabis product manufacturing facility without a certificate of analysis is non usable and may not be remediated.

5. A cannabis product manufacturing facility or cannabis dispensary shall maintain the certificate of analysis for any cannabis or cannabis product for 180 days or until all of the cannabis or cannabis product has been transferred or disposed of, whichever is later.

6. The licensee submitting the cannabis or cannabis product for testing shall pay all fees associated with this testing.

Source:

General Authority: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

44:90:09:02 Creation of batches -- Collection of samples.

1. A cannabis cultivation facility or cannabis product manufacturing facility shall:
   (A) Divide cannabis or cannabis products into batches as directed by a registered cannabis testing facility; and
   (B) Assign a unique batch identifier to the cannabis or cannabis product.
2. When cannabis is harvested or trimmed:
   (A) Cannabis flower must be assigned to a batch containing a single strain from single harvest date; and
   (B) Cannabis trim may be assigned to a batch containing multiple strains and from multiple trimming dates.
3. A cannabis cultivation facility or cannabis product manufacturing facility shall submit for laboratory testing at minimum one sample from of each batch of cannabis or cannabis product or as directed by the cannabis testing facility based on batch size.
4. Before January 1, 2024, samples for testing must be collected by an agent of either the testing facility or the establishment submitting the sample, if:
   (A) No agent collects samples prior to receiving full training on the cannabis testing facility's sample collection procedures;
   (B) The collection of samples takes place in full view of security cameras; and

(C) The collection of samples by agents of the establishment submitting the samples is done with the permission of the cannabis testing facility, which may revoke the permission at any time without stating a reason.

5. On or after January 1, 2024, samples for testing must be collected by an agent of the testing facility.
6. The collection of samples must comply in all manner with the testing facility's standard operating procedures and requirements for ISO/IEC 17025 accreditation.

Source:

General Authority: SDCL 34-20G-72(5)(k)

Law Implemented: SDCL 34-20G-72(5)(k)

44:90:09:03. Packaging of samples for testing.

All samples of cannabis, cannabis extracts, or cannabis products must be transferred to a testing facility in sealed, child-resistant, and tamper-evident containers that are supplied by a testing facility or that meet criteria specified by a testing facility.

Source:

General Authority: SDCL 34-20G-72(5)(k)

Law Implemented: SDCL 34-20G-72(5)(k)

44:90:09:04. Storage while awaiting test results.

A cultivation facility or cannabis product manufacturing facility awaiting testing results shall:

1. Enter the identification number of the batch and the identification number of the samples associated with the batch into the establishment's inventory records;
2. Store the batch in one or more sealed containers enclosed on all sides; and

3. Affix to the container(s) a label including the following information:

   (A) The establishment's identification number;

   (B) The batch number entered into inventory records;

   (C) Name and identification number of the testing facility that will perform the tests;

   (D) The sample's unique identification number

   (E) The date the samples were taken; and

   (F) In bold, capital letters, no smaller than 12-point font, "PRODUCT NOT TESTED."

Source:

General Authority: SDCL 34-20G-72(5)(f)

Law Implemented: SDCL 34-20G-8, 34-20G-72(5)(f)

44:90:09:05. Receipt of results -- Remediation.

1. Upon receipt of a certificate of analysis indicating that cannabis or cannabis products comply with SDCL chapter 34-20G and this article and after the cannabis testing facility updates the inventory tracking system, the cannabis cultivation facility or cannabis product manufacturing facility may transfer the cannabis or cannabis products to another establishment, subject to the inventory tracking requirements of this article.
2. Upon receipt of a certificate of analysis indicating that cannabis or cannabis products are non usable, the cannabis or cannabis must remain, until remediated or disposed of in accordance with this article, in the same storage container(s) with a new label including the following information:

   (A) The establishment's identification number;

   (B) The batch number entered into inventory records;

(C) Name and identification number of the testing facility that will perform the tests;

(D) The sample's unique identification number

(E) The date the samples were taken;

(F) The reason for failed analytical testing; and

(G) In bold, capital letters, no smaller than 12-point font, "PRODUCT FAILED TESTING."

Source:

General Authority: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

44:90:09:06. Remediation of non usable batches.

A cannabis cultivation facility or cannabis product manufacturing facility may elect to remediate a batch of cannabis or cannabis products that has failed testing, as follows:

1. Cannabis and cannabis products that fail tests for metals or pesticides may not be remediated;
2. Cannabis and cannabis products that fail tests for prohibited solvents may not be remediated;
3. An establishment shall outline its processes for remediating cannabis and cannabis products in its operating procedures;
4. An establishment shall obtain Department permission before remediating a batch of cannabis or cannabis products; and
5. Any cannabis or cannabis products must be retested and must pass all required tests after remediation.

Source:

General Authority: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

44:90:09:07. Disposal of non usable batches.

If a cultivation facility or products manufacturing facility is unable or unwilling to mitigate a non usable batch of cannabis or cannabis products, the establishment shall:

1. Note in the inventory tracking system, or if unavailable, provide one business day's notice in writing, that the establishment will dispose of the cannabis or cannabis products;
2. Follow the procedures for disposing of cannabis waste in the establishment's approved operating procedures; and
3. Ensure that destruction and disposal of the non usable batch is captured by functioning security cameras and stored according to this article.

Source:

General Authority: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

Law Implemented: SDCL 34-20G-72(5)(d), 34-20G-72(5)(e)

CHAPTER 44:90:10

PACKAGING, LABELING, AND ADVERTISING

Section

44:90:10:01 Packaging for transfer or sale - General requirements.

44:90:10:02 Packaging for retail sale – General requirements.

44:90:10:03 Packaging of cannabis flower or trim or inhalable cannabis products for retail sale.

44:90:10:04 Packaging of edible cannabis products for retail sale - Tinctures, oils, and beverages excluded.

44:90:10:05 Packaging of cannabis tinctures and oils for retail sale.

44:90:10:06 Packaging of cannabis beverages for retail sale.

44:90:10:07 Packaging of topical cannabis products for retail sale.

44:90:10:08 Labeling required.

44:90:10:09 Format of labeling – Font size – Multiple labels.

44:90:10:10 Labeling claims – Results of testing.

44:90:10:11 Expected effects – Time to take effect – Duration of effect.

44:90:10:12 Ingredients – Allergen warnings.

44:90:10:13 Contents – Net weight or volume -- Nutritional information.

44:90:10:14 Required warnings – Indication that edible product contains cannabis – Side effects – Legal status of cannabis.

44:90:10:15 Identifying information – Establishment identification number – Batch -- Dates.

44:90:10:16 Labeling prohibitions.

44:90:10:17 Prohibited forms of advertising.

44:90:10:18 Target audience – Establishments and adult cardholders only – Prohibition on advertising to practitioners.

44:90:10:19 Prohibited content – Advertisements.

44:90:10:20 Required information.

44:90:10:21 Nonconforming advertising.

44:90:10:01. Packaging for transfer or sale -- General requirements.

1. All cannabis or cannabis products must be packaged for transfer or sale in containers that:

(A) Are fully enclosable;

(B) Are resealable;

(C) Protect the packaged item from contamination; and

(D) Do not impart any toxic or deleterious substance to the packaged item.

2. A cultivation facility shall package all flower, trim, or pre-rolled cigarettes for retail sale before transfer to a dispensary.
3. A cannabis product manufacturing facility shall package all cannabis products for retail sale before transfer to a dispensary.

Source:

General Authority: SDCL 34-20G-72(5)(j)

Law Implemented: SDCL 34-20G-72(5)(j)

44:90:10:02. Packaging for retail sale – General requirements.

1. A dispensary shall transfer any cannabis, cannabis concentrate, or cannabis products to the patient or designated caregiver in packaging that is:

   (A) Child-resistant in compliance with compliant with 16 C.F.R. part 1700 (2020);

   (B) Tamper-evident, using a sealing method that provides clear, lasting evidence that the packaged has previously been opened;

   (C) Resealable, except for single-serving cannabis products; and

   (D) Opaque.

2. Unless otherwise specified by this article, each packaging requirement may be met either by the container provided by the cultivation facility or cannabis product manufacturing facility or by exit packaging supplied by the dispensary at the time of sale.

Source:

General Authority: SDCL 34-20G-72(5)(j)

Law Implemented: SDCL 34-20G-72(5)(j)

44:90:10:03. Packaging of cannabis flower or trim or inhalable cannabis products for retail sale.

Cannabis flower or trim or an inhalable cannabis product must be transferred by a dispensary only in a container that is fully enclosed on all sides, as follows:

1. If the container is soft sided, it must be four mil or greater in thickness; or
2. If container has rigid sides, it must have a lid or enclosure that can be placed tightly and securely on the container.

Source:

General Authority: SDCL 34-20G-72(5)(j)

Law Implemented: SDCL 34-20G-72(5)(j)

44:90:10:04. Packaging of edible cannabis products for retail sale -- Tinctures, oils, and beverages excluded.

1. Single-serving edible cannabis products, other than tinctures, oils, and beverages:
   (A) Shall be placed into a child-resistant container that may or may not be resealable; and
   (B) May be bundled into a larger marketing layer so long as the total amount of active THC per marketing layer does not exceed 100 milligrams.
2. Multiple-serving edible cannabis products, other than tinctures, oils, and beverages:

(A) Shall be packaged either in a resealable container or with individual servings heat-sealed into packaging made of plastic four mil or greater in thickness with no easy-open tab, dimple, corner, or flap;

(B) Shall contain 100 milligrams or less of total THC per multiple-serving container; and

(C) Shall clearly indicate the size of a serving if the edible product is not in a form that indicates a serving.

Source:

General Authority: SDCL 34-20G-72(5)(j)

Law Implemented: SDCL 34-20G-72(5)(j)

44:90:10:05. Packaging of cannabis tinctures and oils for retail sale.

1. A cannabis tincture or oil must be packaged in a glass or plastic vial or dosage syringe, either:

   (A) With a resealable child-resistant cap; or

   (B) With a resealable cap and enclosed in a child-resistant soft-sided container made of plastic four mil or greater in thickness and heat sealed.

2. A product manufacturing facility must indicate individual servings, either:

   (A) By dividing cannabis oil into individual gelatin capsules; or

   (B) By including with the cannabis tincture or oil a measuring device such as a dosing syringe, measuring cap, or dropper. Hash marks on the bottle or package do not qualify as a measuring device.

Source:

General Authority: SDCL 34-20G-72(5)(j)

Law Implemented: 34-20G-72(5)(j)

44:90:10:06. Packaging of cannabis beverages for retail sale.

1. Single-serving cannabis beverages that do not contain more than 10 milligrams of THC must be packaged in:
   (A) A child-resistant container;
   (B) A metal can with a stay tab mechanism opening; or
   (C) A glass bottle with a cork or metal crown style bottle cap.
2. Multiple-serving cannabis beverages that contain more than 10 milligrams of THC but no more than 100 milligrams of THC must:
   (A) Be packaged in a child-resistant container that has a resealing cap or closure; and
   (B) Include a measuring device such as a measuring cap or dropper; hash marks on the bottle or package do not qualify as a measuring device.
3. Cannabis beverages packaged according to this section may be bundled into a larger marketing layer so long as the total amount of THC per marketing layer does not exceed 100 milligrams.

Source:

General Authority: SDCL 34-20G-72(5)(j)

Law Implemented: SDCL 34-20G-72(5)(j)

44:90:10:07. Packaging of topical cannabis products for retail sale.

1. Ointments, creams, and lotions must be packaged in a child-resistant container that has a resealing cap or closure compliant with 16 C.F.R. part 1700 (2020).

2. Dry bath soaks and transdermal patches must be packaged in a plastic four mil or greater in thickness to prevent unintended access to and ingestion by children or pets and be heat sealed with no easy-open tab, dimple, corner, or flap, as to make it difficult for a child to open.

Source:

General Authority: SDCL 34-20G-72(5)(j)

Law Implemented: SDCL 34-20G-72(5)(j)

44:90:10:08. Labeling required.

1. All cannabis, cannabis extract, and cannabis products must be labeled in accordance with this chapter before sale or transfer to the patient or designated caregiver.
   (A) Prior to transferring cannabis to a dispensary, a cultivation facility shall label the marketing layer of each container.
   (B) Prior to transferring cannabis products to a dispensary, a cannabis product manufacturing facility shall label each the marketing layer of each container.
2. Unless otherwise specified, all required information may be printed directly on, or printed on a sticker attached to the marketing layer of the cannabis, cannabis extract, or cannabis product.

Source:

General Authority: SDCL 34-20G-72(7)

Law Implemented: SDCL 34-20G-72(7)

44:90:10:09. Format of labeling – Font size – Multiple labels.

All required information must be printed clearly in English in type no smaller than 6-point font (1/12 inch). An establishment may affix an extendable, accordion-style, label, layered label, or multiple labels to the marketing layer, if none of the required information is obstructed and the label can be easily identified by a patient or designated caregiver as containing important information.

Source:

General Authority: SDCL 34-20G-72(7)

Law Implemented: SDCL 34-20G-72(7)

44:90:10:10. Labeling claims -- Results of testing.

1. The results of any testing mandated by the department must be included on the label of any cannabis or cannabis product.
2. The label must state the THC content, in milligrams of total THC and as a percentage of the product's weight.
3. No label may contain claims regarding CBD content or the absence of microbials, metals, solvents, or pesticides except to list the results of analytical tests performed by a registered cannabis testing facility.

Source:

General Authority: SDCL 34-20G-72(7)

Law Implemented: SDCL 34-20G-72(7)

44:90:10:11. Expected effects – Time to take effect – Duration of effect.

1. The label of any cannabis or cannabis product must indicate:

(A) The length of time, in hours or minutes, that it may take the patient to feel effects; and

(B) The length of time the patient should expect the effects to last.

2. The estimated time to take effect and duration of effect must be based on the best estimate of the establishment printing the label.

3. All edible products, except ethanol-based tinctures, must additionally contain the following warning: "Effects of this product may not be felt for up to 4 hours."

Source:

General Authority: SDCL 34-20G-72(7)(a)

Law Implemented: SDCL 34-20G-72(7)(a)

44:90:10:12. Ingredients – Allergen warnings.

1. The label of any cannabis or cannabis product must identify any pesticides used in cultivation.

2. The label of any cannabis product must list all ingredients and, if applicable, gases, solvents, or other chemicals used in extraction.

3. The label of any edible cannabis product must identify any major allergens contained in the product in accordance with 21 U.S.C. § 343 (2021), including milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.

Source:

General Authority: SDCL 34-20G-72(7)(c)

Law Implemented: SDCL 34-20G-72(7)(c)

44:90:10:13. Contents – Net weight or volume -- Nutritional information.

1. The label's statement of net contents must identify the net weight or volume of the cannabis, cannabis extract, or cannabis product, expressed:

   (A) If a solid, in both ounces and grams/milligrams; or

   (B) If a liquid or colloid, in both fluid ounces and milliliters.

2. The label of any cannabis product must state the equivalent cannabis weight, calculated according to the equivalent cannabis weight table included in section 44:90:02:10 of this article.

3. The label of any edible cannabis product except tinctures, oils, and capsules must identify the size, expressed in ounces and grams/milligrams, fluid ounces or milliliters, or number of pieces, of a serving providing 10 mg of THC and the number of servings per marketing layer;

4. The label of tinctures, oils, and capsules must contain the size of one or more dosages, expressed in milliliters, number of drops, or number of capsules, along with the amount of THC, in milligrams, in each dosage identified;

5. The label of vaporizer cartridges, vaporizer pens, and topical cannabis products must be expressed in the weight of concentrate used to manufacture the product within the marketing layer in milligrams or grams and ounces.

6. Any edible cannabis product, except tinctures, oils, and capsules, must be labeled with a nutritional fact panel in accordance with 21 C.F.R. part 101 (2018).

Source:

General Authority: SDCL 34-20G-72(7)

Law Implemented: SDCL 34-20G-72(7)

44:90:10:14. Required warnings -- Indication that product contains cannabis – Side effects – Legal status of cannabis.

1. The department shall design a standard symbol that indicates an item contains cannabis or cannabis extract, which shall be used by all registered establishments.
2. This standard symbol must appear on the front or most predominantly displayed area of the marketing layer of an edible cannabis product, no smaller than 1/2 inch by 1/2 inch.
3. Labels must contain the following warning statements in no smaller than 6-point font:
   (A) For all cannabis and cannabis products: "Contains cannabis. For medical use by qualifying patients only. There may be health risks associated with the use of this product. There may be additional health risks associated with the use of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant. Do not drive a motor vehicle or operate heavy machinery while using this product.";
   (B) For all cannabis flower and trim, including pre-rolled cannabis cigarettes: "Not for retail sale to persons under 21 years of age.";
   (C) For all inhalable cannabis products: "Possession by persons under 21 years old illegal."; and
   (D) For concentrates in smokable form with a THC content greater than 60 percent: "Sale or possession of more than 4 grams of high-strength concentrate is illegal."

Source:

General Authority: SDCL 34-20G-72(7)(d)

Law Implemented: SDCL 34-20G-72(7)(d)

44:90:10:15. Identifying information – Establishment identification number – Batch -- Dates.

The container or exit packaging for any cannabis or cannabis product sold by a dispensary must identify:

1. The registration number of any cultivation facility, cannabis product manufacturing facility, or dispensary involved in the cultivation, processing, or sale of the item;
2. Batch numbers;
3. Cultivation date of cannabis flower or trim; and
4. Production date of cannabis products.

Source:

General Authority: SDCL 34-20G-72(7)(d)

Law Implemented: SDCL 34-20G-72(7)(d)

44:90:10:16. Labeling prohibitions.

No label may:

1. Include representations as to cannabinoid content or to the absence of pesticides, mold, or other contaminants, other than to provide the results of analysis performed by a cannabis testing facility certified in accordance with this article;
2. Make claims regarding health or physical benefits to the consumer;
3. Include any false or misleading statements;
4. Obscure identifying information or warning statements;
5. Use any trademark without authorization;

6. Depict a human, animal, creature, vehicle, fruit, cartoon character, toy, emoji, or other artwork likely or intended to appeal to anyone under 21 years of age;
7. Include the word "candy" or "candies"; or
8. Refer to any item typically marketed to persons under 21 years of age.

Source:

General Authority: SDCL 34-20G-72(7)(d)

Law Implemented: SDCL 34-20G-72(7)(d)

44:90:10:17. Prohibited forms of advertising.

No establishment may advertise:

1. On a sign or billboard, except that a dispensary may advertise on signs on its own premises;
2. By distributing handbills in public areas or on publicly owned property;
3. Through direct mail, phone, text, or email without verifying the recipient is a cardholder or medical cannabis establishment and offering a permanent opt-out feature;
4. On television or radio;
5. Through a practitioner or health care facility, including placement of advertising material onsite or targeting their patients through direct mail, phone, text, or email.

Source:

General Authority: SDCL 34-20G-72(5)(i)

Law Implemented: SDCL 34-20G-33, 34-20G-78

44:90:10:18. Target audience – Establishments and adult cardholders only – Prohibition on advertising to practitioners.

1. Advertisements must be targeted as directly as possible to:

(A) Other establishments;

(B) Cardholders who are 21 years of age or older; and

(C) Readers of medical publications.

2. Advertisements may not target:

(A) Non-cardholders, including:

(1) Suggesting a medical evaluation; or

(2) Interacting with the public at events sponsored by the establishment;

(B) Anyone under the age of 21, including:

(1) Depicting anyone under 21 years of age; or

(2) Using cartoons, toys, or other products or images commonly associated with or marketed to individuals under 21 years of age; or

(C) Practitioners or health care facilities, other than advertising in medical publications.

3. Any advertising on websites, social media, or mobile applications must include:

(A) A verification that the recipient is a cardholder 21 years of age or older; and

(B) A permanent opt-out feature.

Source:

General Authority: SDCL 34-20G-72(5)(i)

Law Implemented: SDCL 34-20G-33, 34-20G-74, 34-20G-78

44:90:10:19. Prohibited content – Advertisements.

No advertisement for a medical cannabis establishment may:

1. Make deceptive, false or misleading statements;

2. Make claims related to potency (beyond listing of cannabinoid content verified by a testing facility);
3. Depict consumption of cannabis or cannabis products;
4. Depict pregnancy, breastfeeding, or operating a motorized vehicle, boat or machinery;
5. Depict or refer to candy or a specific type of candy;
6. Use a trademark associated with a non-cannabis product, including parody or other use that has similarity to the original;
7. Encourage the transportation of cannabis across state lines or otherwise encourage illegal activity;
8. Assert that cannabis is safe because it is regulated by the department, tested by a testing facility, or otherwise endorsed by any government agency;
9. Make claims that cannabis has curative or therapeutic effects;
10. Claim any health or physical benefits; or
11. Encourage excessive or rapid consumption.

Source:

General Authority: SDCL 34-20G-72(5)(i)

Law Implemented: SDCL 34-20G-72(5)(i)

44:90:10:20. Required information.

Any advertisement must contain the following information:

1. A statement "For medical use by qualifying patients only"; and
2. The medical cannabis establishment identification number.

Source:

General Authority: SDCL 34-20G-72(5)(i)

Law Implemented: SDCL 34-20G-72(5)(i)

44:90:10:21. Nonconforming advertising.

1. Any nonconforming advertising is a violation of this article and SDCL chapter 34-20G.
2. Upon notification by the department, the establishment must cease the nonconforming advertisements and remove any nonconforming advertising from websites, social media, mobile applications, or signs.
3. Failure to cease or remove the advertising within 48 hours is a serious and knowing violation of this article and SDCL chapter 34-20G.

Source:

General Authority: SDCL 34-20G-72(5)(i)

Law Implemented: SDCL 34-20G-80

CHAPTER 44:90:11

RECORDKEEPING

Section

44:90:11:01 Inventory tracking system – Required use.

44:90:11:02 Retention of records – Electronic and paper – Amended records.

44:90:11:03 Daily inventory record.

44:90:11:04 Daily transfer record.

44:90:11:05 Daily testing sample record.

44:90:11:06 Cultivation facility inventory records – Additional requirements.

44:90:11:07 Cannabis product manufacturing facility inventory records – Additional requirements.

44:90:11:08 Testing facility inventory records – Additional requirements.

44:90:11:09 Dispensary inventory records – Additional requirements.

44:90:11:10 Daily transaction record.

44:90:11:11 Department access to and use of establishment records.

44:90:11:01. Inventory tracking system – Required use.

Establishments are required to use an electronic inventory tracking system prescribed by the department to create all required inventory records, transfer records, testing sample records, and transaction records.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63

44:90:11:02. Retention of records -- Electronic and paper – Amended records.

1. A cannabis establishment must maintain, for a minimum of 18 months, records to enable the department to identify and prevent diversion of cannabis and to protect patients from unsafe cannabis and cannabis products, including:

   (A) All point of sale records, whether in electronic or paper form;

   (B) Transport manifests; and

   (C) Daily inventory records, transfer records, testing sample records, and transaction records.

2. No inventory record, transfer record, testing sample record, or transaction record may be altered after the date on which it was created.
3. If necessary, an amended inventory record, transfer record, testing sample record, or transaction record may be created, but the original record is subject to record retention requirements.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63

44:90:11:03. Daily inventory record.

1. A cannabis establishment must maintain and update by midnight each day of operation, an electronic record of the establishment's inventory of cannabis, including seeds, seedlings, plants, extracts, products, and waste.
2. For prepackaged cannabis or cannabis products, the inventory record shall include the number of marketing layers of each item.
3. The inventory record must use the following units of measure:
   (A) For seeds, seedlings, and plants, whole numbers;
   (B) For cannabis flower, trim, pre-rolled cannabis cigarettes, extract, and dry or powdered topical products, net weight in grams and ounces;
   (C) For vaporizer cartridges, vaporizer pens, and concentrate in smokable form, net weight in milligrams;
   (D) For edible cannabis products and transdermal patches, milligrams of THC; and
   (E) For ointments, creams, or lotions, net volume in fluid ounces.

4. The inventory record must reflect:

   (A) The destruction of cannabis or disposal of cannabis waste;

   (B) Theft or other loss; and

   (C) Data from the transfer record.

5. The inventory record must be maintained securely and may not identify any cardholder other than by the cardholder's identification number.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63

44:90:11:04. Daily transfer record.

1. A cannabis establishment shall maintain and update by midnight, an electronic record of all cannabis, including any seeds, plants, extracts, or products, obtained from a cardholder or another establishment, and all cannabis transferred to another establishment.
2. The transfer record must use the same units of measure as the inventory record.
3. The transfer record must reflect all transport manifests.
4. The transfer record must be maintained securely and may not identify any cardholder except by the cardholder's identification number.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63

44:90:11:05. Daily testing sample record.

1. A cannabis establishment shall maintain and update by midnight, an electronic testing sample record, including:

   (A) The batch identifier and quantity of each batch from which samples were drawn;

   (B) The sample identifier of each sample created, its quantity, and the batch identifier associated with the sample;

   (C) The tests to be performed; and

   (D) Test results, including a note of whether the testing facility has indicated the batch is safe or unsafe for transfer to another establishment.

2. The quantity of each batch and each sample must be expressed in the same units as the inventory record.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63

44:90:11:06. Cultivation facility inventory records – Additional requirements.

1. The inventory record of a cultivation facility must include a unique identifier for each immature plant and mature plant, which must also be printed on a tag or label affixed to the growing container or a tag around the plant's stalk.

2. The inventory record must be updated each time:

   (A) A seedling exceeds its size limit and is considered a plant;

   (B) A plant flowers for the first time;

   (C) A plant is trimmed or harvested;

   (D) A testing batch is created; or

(E) Cannabis is packaged for retail sale.

3. The record for a testing batch must indicate the unique identifier for each plant used to produce the batch.
4. The record for cannabis packaged and labeled for transfer to a dispensary must include the number of marketing layers and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63, 34-20G-88

44:90:11:07. Cannabis product manufacturing facility inventory records – Additional requirements.

1. The inventory record of a cannabis product manufacturing facility must include the testing batch identification number of any cannabis obtained from a cultivation facility.
2. The inventory record must be updated each time:
   (A) A quantity of extract or concentrated cannabis is made from cannabis flower or trim;
   (B) A quantity of cannabis product is made from concentrated cannabis, cannabis extract, flower, or trim; or
   (C) A quantity of cannabis product is packaged for retail sale.
3. Any extract must be assigned to a testing batch, which must:
   (A) Consist only of extract produced on a single day using the same extraction method; and
   (B) Be entered into the inventory record with the identifier of any testing batch of cannabis from which it was produced.

4. Any cannabis product must be assigned to a testing batch, which must:

   (A) Consist only of a single type of product produced on a single day; and

   (B) Be entered into the inventory record with the identifier or any testing batch of cannabis or cannabis extract from which it was produced.

5. The record for cannabis extracts or products packaged and labeled for transfer to a dispensary must include the testing batch identifier, the number of marketing layers, and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63, 34-20G-88

44:90:11:08. Testing facility inventory records – Additional requirements.

1. A testing facility shall maintain and update by midnight each day of operation, an inventory record of:

   (A) All samples in its possession, with unique identifiers and quantities expressed in units specified in its operating procedures; and

   (B) All other cannabis, cannabis extracts, and cannabis products acquired for training or reference purposes;

2. The inventory record must reflect:

   (A) The quantity of each sample rendered unusable by testing;

   (B) The quantity of each sample returned to the establishment;

   (C) The quantity of each sample destroyed or disposed of; and

(D) The quantity of any sample lost, stolen, or otherwise unaccounted for.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63, 34-20G-88

44:90:11:09. Dispensary inventory records – Additional requirements.

1. The inventory record of a dispensary must include all cannabis, cannabis extracts, and cannabis products, including the type of product, the testing batch identifier, the number of marketing layers, and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement.
2. The inventory record must be updated each day of operation to reflect:
   (A) Any cannabis, cannabis extracts, or cannabis products received from another establishment;
   (B) Sales to qualifying cardholders, which must include the cardholder's identification number;
   (C) Returns of merchandise from cardholders, whether to be resold, returned to another establishment, or destroyed;
   (D) Transfers to another establishment, including returns; and
   (E) Destruction of cannabis.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63, 34-20G-88

44:90:11:10. Daily transaction record.

1. A dispensary shall maintain and shall update by midnight each day of operation, a transaction record, which shall include:
   (A) The type of product, the testing batch identifier, the number of marketing layers, and the quantity of cannabis in each marketing layer, as expressed according to the relevant labeling requirement, for each sale or return; and
   (B) The cardholder identification number associated with each quantity.
2. The transaction record may contain no other identifying information relating to a cardholder.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63, 34-20G-71

44:90:11:11. Department access to and use of establishment records.

1. The department's agents:
   (A) Shall have access to all records, including transport manifests during an inspection of an establishment or vehicle, or in response to a written or telephone inquiry.
   (B) May compare inventory onsite or in delivery vehicles to the establishment's inventory records.
   (C) May compare transport manifests or observed deliveries to the establishment's transfer records.
2. Upon the discovery of any inconsistencies in the establishment's record-keeping, the department shall:
   (A) Make a determination of whether the inconsistences are knowing or negligent;

(B) Inform the establishment in writing of its findings;

(C) If applicable, initiate suspension or revocation proceedings; and

(D) If applicable, refer possible criminal violations to state and local law enforcement.

Source:

General Authority: SDCL 34-20G-72(5)(b)

Law Implemented: SDCL 34-20G-63, SDCL 34-20G-88

CHAPTER 44:90:12

ENFORCEMENT

Section

44:90:12:01 Department inspection of establishments – Recalls -- Corrective action plan.

44:90:12:02 Suspension or revocation of registration certificates for serious violations.

44:90:12:03 Suspension or revocation of a registration certificate for multiple violations.

44:90:12:04 Voluntary surrender of registration certificate.

44:90:12:05 Revocation of registry identification card for unauthorized sale.

44:90:12:06 Revocation of registry identification card for serious or multiple violations.

44:90:12:01. Department inspection of establishments – Recalls -- Corrective action plan.

1. Agents of the department may conduct routine, unannounced inspections and inspections in response to complaints.

2. Agents of the department:

(A) Must present identification before commencing an inspection of an establishment;

(B) Shall have complete and unrestricted access to establishments during business hours or when establishment agents are present for the purposes of inspections, sample collection, testing, interviews, or other investigations;

(C) May collect samples of cannabis and cannabis products and perform analytical tests on those samples or submit them to a cannabis testing facility for testing;

(D) May inspect the contents of any vehicle used by an establishment to transport cannabis, cannabis extracts, or cannabis products and examine the transport manifest; and

(E) Shall have access to inventory records and certificates of analysis maintained by the establishment, including collecting paper or electronic copies for further review.

3. The department shall provide an establishment the results of any analytical tests performed on samples taken from the establishment and shall inform the establishment whether the cannabis or cannabis products from which the samples were taken are non usable;

4. If the department determines that cannabis or cannabis products that have been transferred to a dispensary pose a risk to public health or safety due to contamination, spoilage, mislabeling, or other reasons, the department may initiate a recall as follows:

(A) The department shall request that any establishment that cultivated, manufactured, or sold the affected cannabis or cannabis products initiate a voluntary recall;

(B) The department's correspondence shall include the reasons for the recall request;

(C) The affected establishments must immediately store the affected cannabis in storage containers labeled prominently with the words "RECALLED – DO NOT TRANSFER;

(D) The affected establishments may voluntarily issue a recall of the cannabis or cannabis products;

(E) If the affected establishments agree to issue a recall, then the dispensary shall inform patients who purchased the recalled products that they should discontinue use and return the items to the dispensary; and

(F) If one or more affected establishments do not agree with the recall request, the department may order the recall of the affected items and shall identify the department's decision as a final department action subject to judicial review.

5. Upon the discovery of suspected violations of this article or SDCL chapter 34-20G, agents of the department may order the establishment to comply with a corrective action plan, which may include:

(A) Modifying operating procedures to comply with this article and SDCL chapter 34-20G;

(B) Halting transfer of cannabis or cannabis products that are mislabeled or otherwise pose a threat to public health; and

(C) Destroying or remediating cannabis or cannabis products that pose a threat to public health.

6. The department may order a licensee to destroy a batch of cannabis or cannabis products that fails testing and does not need to demonstrate that the presence of contaminants was due to the action or inaction of the licensee. Such notice must identify the department's decision as a final department action subject to judicial review.

7. Nothing in this section prohibits licensees from initiating corrective action, including voluntarily recalling cannabis or cannabis products.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-69

44:90:12:02. Suspension or revocation of registration certificates for serious violations.

1. The department may, pursuant to SDCL chapter 1-26 and SDCL 34-20G-81, suspend for up to six months or revoke a registration certificate for any knowing violation of this article or SDCL chapter 34-20G that involves dishonesty, diversion, or threat to public health or safety, including knowingly:
   (A) Selling or otherwise transferring cannabis in exchange for anything of value to a person other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent;
   (B) Making a false statement to a law enforcement official;
   (C) Sharing confidential information about a cardholder for monetary gain or to cause harm to the cardholder;
   (D) Submitting false records or documentation required by the department to certify a medical cannabis establishment;
   (E) Failing to meet obligations or conditions agreed to in the application for a registration certificate;
   (F) Dispensing, transferring, or selling cannabis while a registration certificate is suspended;
   (G) Obtaining cannabis seeds, cannabis seedlings, cannabis plants, cannabis, cannabis extract, or cannabis products in violation of this article or SDCL chapter 34-20G;
   (H) Failing to enter cannabis seedlings, cannabis plants, cannabis, cannabis extracts, or cannabis products into the establishment's inventory records;
   (I) Applying pesticides to cannabis plants without following all requirements of this article;
   (J) Using solvents without authorization or in an unsafe manner;

(K) Misrepresenting the results of laboratory analysis;

(L) Transferring non usable cannabis or cannabis products, unless allowed by this article for the purposes of remediation; or

(M) Committing any misdemeanor or felony offense in connection with the operation of a medical cannabis establishment.

2. Upon the discovery of violations that pose an ongoing threat to public health, safety, or welfare, the department may initiate emergency suspension proceedings pursuant to SDCL 1-26-29.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-80, 34-20G-81

44:90:12:03. Suspension or revocation of a registration certificate for multiple violations.

1. The department may, pursuant to SDCL chapter 1-26 and SDCL 34-20G-81, suspend for up to six months or revoke a registration certificate upon finding that the establishment has committed multiple violations of this article or SDCL chapter 34-20G, including:

(A) Serious violations of this article or SDCL chapter 34-20G;

(B) Negligent violations of this article or SDCL chapter 34-20G;

(C) Deviation from operating procedures in a manner that poses a threat to public safety or health, including the availability of cannabis, cannabis extract, or cannabis products to qualifying patients, including low-income qualifying patients;

(D) Sharing a cardholder's personal information;

(E) Minor or technical violations of this article that did not result in diversion of cannabis or harm to public health or safety;

(F) Violations of local ordinances governing the time, place, and manner of a medical cannabis establishment that may operate in the locality;

(G) Failure to allow agents of the department or any law enforcement agency access to an establishment during normal business hours; or

(H) Failure to provide a notice required by this article or SDCL chapter 34-20G.

2. Upon the discovery of violations that pose an ongoing threat to public health, safety, or welfare, the department may initiate emergency suspension proceedings pursuant to SDCL 1-26-29.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-80, 34-20G-81

44:90:12:04. Voluntary surrender of registration certificate.

An establishment may offer to voluntarily surrender its registration certificate, cease operations, and may not renew or transfer the registration certificate. In such cases, the department has the discretion:

1. To reject voluntary surrender;
2. To accept the voluntary surrender without conditions; or
3. To negotiate conditions of a voluntary surrender, including the amount of time before which the establishment or any principal officer or board member may apply for a registration certificate.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-80, 34-20G-81

44:90:12:05. Revocation of registry identification card for unauthorized sale.

Upon a finding that a cardholder has sold cannabis to any person who is not authorized to possess cannabis for medical purposes, the department shall initiate emergency suspension proceedings pursuant to SDCL 1-26-29 and notify the cardholder in writing of the revocation of the registry identification card, along with notice of the right to appeal.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-83

44:90:12:06. Revocation of registry identification card for serious or multiple violations.

The department may, pursuant to SDCL chapter 1-26 and SDCL 34-20G-84 revoke a registry identification card upon finding that the cardholder has committed serious or multiple violations of SDCL chapter 34-20G, including:

1. Transferring cannabis to any person who is not authorized to possess cannabis for medical purposes;
2. Submitting false information to the department;
3. Making false statements to a law enforcement officer;
4. Allowing unauthorized use of a registry identification card;

5. Accepting remuneration other than direct costs incurred for assisting with the registered qualifying patient's medical use of cannabis, pursuant to SDCL 34-20G-2(2); or

6. Cultivating cannabis in violation of SDCL chapter 34-20G.

Source:

General Authority: SDCL 34-20G-72(6)

Law Implemented: SDCL 34-20G-84

CHAPTER 44:90:13

PETITIONS TO RECOGNIZE DEBILITATING MEDICAL CONDIITIONS

Section

44:90:13:01 Qualifying debilitating medical conditions

44:90:13:02 Petitions – Required forms.

44:90:13:03 Department's decision.

44:90:13:01. Qualifying debilitating medical conditions.

1. In addition to the conditions listed in SDCL 34-20G-1(8), the following conditions and treatments are recognized as qualifying debilitating medical conditions:
   (A) Acquired immune deficiency syndrome (AIDS) and positive status for human immunodeficiency virus (HIV);
   (B) Amyotrophic lateral sclerosis (ALS);
   (C) Multiple sclerosis (MS);
   (D) Cancer or its treatment, if associated with severe or chronic pain, nausea or severe vomiting, or cachexia or severe wasting;
   (E) Crohn's disease;

(F) Epilepsy and seizures;

(G) Glaucoma; and

(H) Post-Traumatic Stress Disorder (PTSD).

Source:

General Authority: SDCL 34-20G-72(1)

Law Implemented: SDCL 34-20G-26

44:90:13:02. Petitions – Required forms.

A petition to the secretary to add a medical condition to the list of debilitating medical conditions for which a practitioner may recommend the medical use of cannabis must be submitted on forms provided by the department. The petition must include:

1. The name and address of the South Dakota resident filing the petition;
2. A clear description of the specific medical condition, defined as narrowly as possible, including any International Classification of Diseases, Tenth Revision (ICD-10) code applicable to the condition;
3. The diagnostic criteria for determining whether cannabis is appropriate for a patient with the medical condition; and
4. A detailed summary, with citations, of peer-reviewed research that treatment with cannabis produces superior treatment outcomes or fewer side effects, compared to currently available medications or other interventions;
5. Letters of support from two practitioners; and
6. Complete copies of any research cited in the petition.

Source:

General Authority: SDCL 34-20G-72(1)

Law Implemented: SDCL 1-26-13, 34-20G-26

Reference: National Center for Health Statistics. (2021). *International Classification of Diseases, 10th Revision, Clinical Modification.* https://icd10cmtool.cdc.gov/

44:90:13:03. Department's decision.

The secretary's written decision to approve or deny a petition must be issued within 180 days of submission and must include the factors supporting the decision, including whether the written petition, public testimony, written comments, peer-reviewed research, and consultation with practitioners support the following conclusions:

1. The proposed medical condition is recognized by the medical profession as a serious and chronic medical condition;
2. Treatments currently available for the proposed condition are either ineffective or produce harmful side effects; and
3. Medical use of cannabis will provide therapeutic or palliative benefits that outweigh the risks of cannabis use.

Source:

General Authority: SDCL 34-20G-72(1)

Law Implemented: SDCL 34-20G-26